TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~352~~ 143

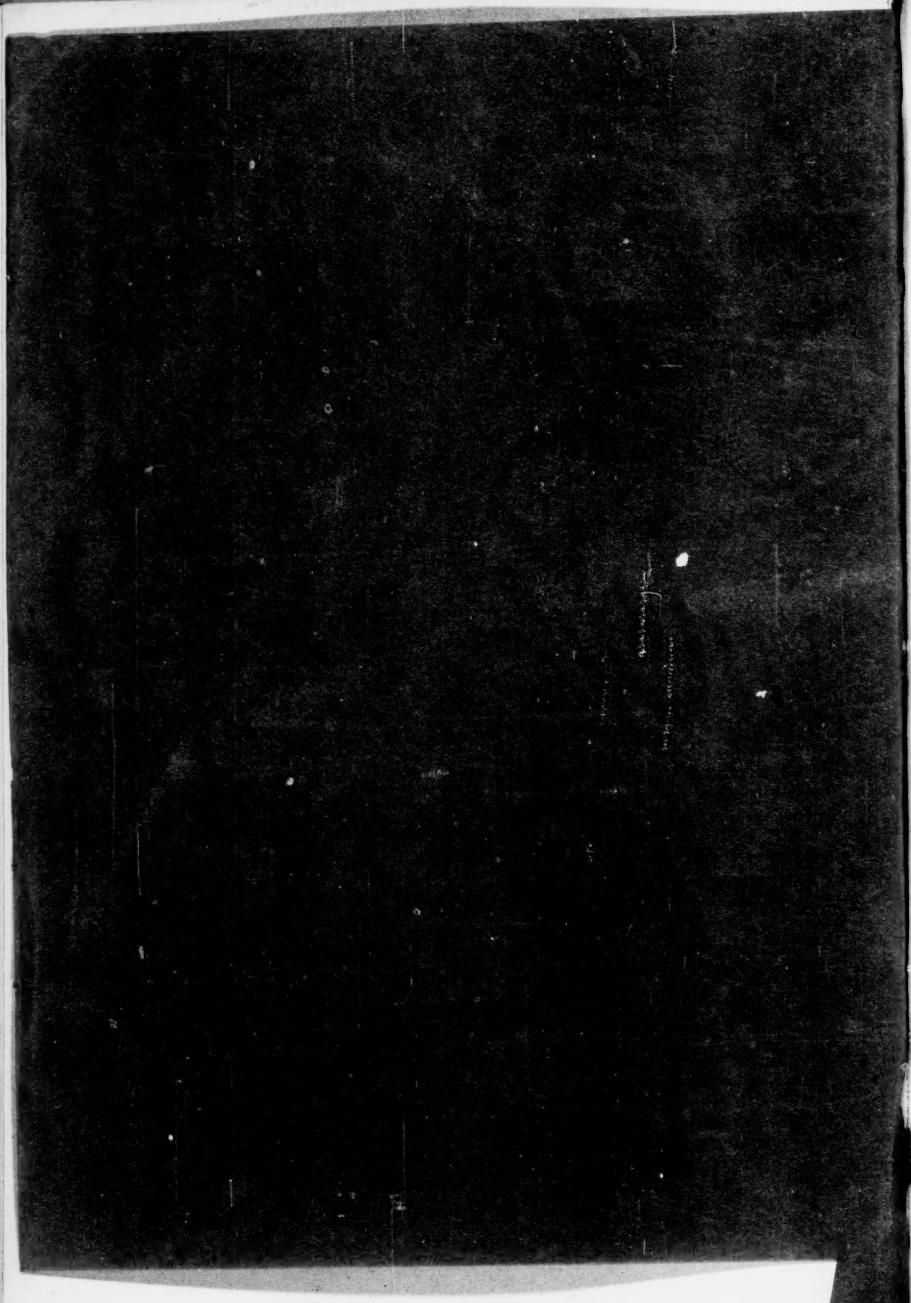
JOHN JONES, RANDOLPH H. RAMSAY, AND WILLIAM G. LAUTERMAN, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES OF AMERICA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

FILED FEBRUARY 24, 1872.



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a UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

At a stated term of the circuit court of the United States of America for the fifth circuit and southern district of Georgia, begun and held according to law, on the second Monday (being the tenth day) of April, A. D. 1871, at the city of Savannah, in said southern district of Georgia—present and presiding the Honorable John Erskine, United States judge for the district of Georgia—and on the twenty-sixth day of the term, to wit, on the sixth day of May, A. D. 1871, the following proceedings were had to wit:

THE UNITED STATES
vs.
WILLIAM E. QUILLIAN ET AL. } Debt.

Be it remembered, that heretofore to wit, on the nineteenth day of February, A. D. 1870, came the plaintiff, by its attorney, Amos T. Akerman, and filed its declaration, in the words following, to wit:

1 *Declaration.*

UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

To the honorable the judges of the fifth circuit court of the United States for the southern district of Georgia:

The petition of the United States of America showeth, that William E. Quillian, Randolph H. Ramsay, John Jones, and William G. Lauterman of said district are indebted unto the United States of America in the sum of ten thousand dollars. For that whereas the said William E. Quillian, Randolph H. Ramsey, John Jones, and William G. Lauterman, on the thirteenth day of June, in the year of our Lord one thousand eight hundred and sixty seven, within the district aforesaid, and the jurisdiction of this honorable court, by their certain writing-obligatory, sealed with their seals, and now here to the court shown, acknowledged themselves to be bound unto the United States of America in the aforesaid sum of ten thousand dollars, to be paid to the said United States of America when thereto required. Yet the said William E. Quillian, Randolph H. Ramsay, John Jones, and William G. Lauterman, although often required, have not paid the said sum of money, but have refused, and still refuse, to the damage of the United States of America the sum of ten thousand dollars.

2 Wherefore the said United States of America prays process may issue requiring the said William E. Quillian, Randolph H. Ramsay, John Jones, and William G. Lauterman personally or by attorney, to be and appear at the clerk's office of said court, in the city of Savannah, at rules to be held on the first Monday of March next, to answer to the United States in an action of debt, &c.

AMOS T. AKERMAN,
District Attorney.

Process.

In the fifth circuit court of the United States, so. dist. of Georgia.

UNITED STATES OF AMERICA,
Southern District of Georgia.

THE UNITED STATES OF AMERICA,
vs.
WILLIAM E. QUILLIAN, RANDOLPH H. RAMSAY, John Jones, and William G. Lauterman. } Debt.

The President of the United States to the marshals of the district of Georgia, greeting:

The defendants, William E. Quillian, Randolph H. Ramsay, John Jones, and William G. Lauterman, are hereby required personally, or by attorney, to be and appear at the clerk's office of said court in the city of Savannah, at rules, to be had on the first Monday of March next, then and there to answer the plaintiff in an action of debt, as in default thereof the said court will proceed as to justice shall appertain.

3 Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this twenty-seventh day of January, in the year of our Lord one thousand eight hundred and seventy.

{ SEAL OF THE COURT. }

AMOS T. AKERMAN,
Pl'ff's Att'y.

JAMES MCPHERSON, *Clerk.*

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Return.

And afterwards came the marshal and made return of the summons in the words following, to wit:

"I have served William G. Lauterman personally with a copy of the within writ, and John Jones by leaving a copy at his usual place of residence, Feb'y 15, 1870, and Randolph H. Ramsay personally, Feb'y 16, 1870, with a copy of the within writ. William E. Quillian is not to be found in this district, due and diligent search being made.

Return of—

W'M H. SMITH,
U. S. Marshal.
By SAMUEL PECK,
Special Deputy Marshal.

Copy bond sued upon.

And afterwards, to wit, came the plaintiff by its attorneys and filed a copy of the bond sued upon, in the words following, to wit:

Know all men by these presents, that we, William E. Quillian, of Milledgeville, in the county of Baldwin, State of Georgia,
4 and Randolph H. Ramsay, John Jones, and William G. Lauterman, of Milledgeville, Georgia, are held and firmly bound unto the United States of America in the just and full sum of ten ($10,000)

thousand dollars, for the payment whereof well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. In witness whereof we have hereunto subscribed our names and affixed our seals this thirteenth day of June, in the year of our Lord one thousand eight hundred and sixty-seven.

The condition of this obligation is such, that whereas the above-bounden William E. Quillian was appointed deputy postmaster at Milledgeville aforesaid, on the twentieth of March aforesaid, 1867, which said appointment was, on the 20th day of March, 1867, *was* confirmed by the Senate of the United States.

Now, if the said William E. Quillian shall well and truly execute the duties of said office according to law and the instructions of the Postmaster-General, and faithfully, once in three months or oftener if thereto required, render accounts of his receipts and expenditures as deputy postmaster to the Post-Office Department in the manner and form prescribed by the Postmaster-General in his several instructions to postmasters, and shall pay the balance of all moneys that shall come to his hands from postage collected, postage-stamps, and stamped envelopes sold, or money-orders issued by him or from any other source connected with the postal service, in the manner prescribed by the Postmaster-General of the United States for the time being, and shall keep safely, without loaning, using, depositing in other banks, or exchanging for other funds than as allowed by law, all the public money collected by him or otherwise at any time placed in his possession and custody, till the same is ordered by the Postmaster-General to be transferred or paid out; and when such orders for transfer or payment are received, shall faithfully and promptly make the same as directed, and shall also faithfully do and perform, as agent and depository for the Post-Office Department, all such acts and things as may be required of him by the Postmaster-General; and, moreover, shall faithfully account with the United States, in the manner directed by the said Postmaster-General, for all moneys, postage stamps, stamped envelopes, bills, bonds, notes, drafts, receipts, vouchers, money-orders, blanks, and other property and papers which he, as postmaster, or as agent & depository as aforesaid, shall receive for the use and benefit of the said Post-Office Department, then the above obligation shall be void; otherwise of force.

Witness: PETER FAIR.

WILLIAM E. QUILLIAN. [SEAL.]
R. H. RAMSAY. [SEAL.]
JNO. JONES. [SEAL.]
W. G. LAUTERMAN. [SEAL.]

[Stamp.]

STATE OF GEORGIA, *ss:*

I hereby certify that R. H. Ramsay, John Jones, W. G. Lauterman, the surities above-named, and who have signed the foregoing bond, are responsible and sufficient to insure the payment of double the entire penalty named therein.

Witness my hand this 13th day of June, A. D. 1867.

PETER FAIR, J. P.

[Stamp.]

STATE OF GEORGIA, *County of Baldwin, ss:*

Randolph H. Ramsay, John Jones, W. G. Lauterman, surities, being duly sworn, depose and say, and each for himself deposes and says, he

has executed the within bond, and that his place of residence is corrected stated therein; that he is a freeholder of said State, and that he is worth the sum here set against his name over and above all debts and liabilities existing against him, the total sum thus assured amounting to twenty thousand dollars.

R. H. RAMSAY	$5,000
JNO. JONES	10,000
W. G. LAUTERMAN	5,000

Subscribed and sworn before me this 13th day of June, 1867.

PETER FAIR,
Justice of the Peace.

Notice of demand of oyer of condition of bond sued on.

To Amos T. Akerman, Esq., attorney for the plaintiffs:

NOTICE.—Defendants demand oyer of the condition of the bond sued upon in the above-entitled action.

W'M McKINLEY,
Def'd't's Attorney.

MARCH 21, '70.

7 I acknowledge service of this notice, and waive time, &c.
April 2, 1870.

AMOS T. AKERMAN, *U. S. Att'y.*

Pleas of defendant.

And afterwards, to wit, on the 4th day of April, A. D. 1870, came the defendants, by their attorney, William McKinley, esq., and filed their pleas in the words following, to wit:

THE UNITED STATES
vs.
WILLIAM E. QUILLIAN, JOHN JONES, R. H. RAMSAY, W. G. LAUTERMAN. } Debt.

And now, at April rules, A. D. 1870, come the defendants, John Jones, Randolph H. Ramsay, and W'm G. Lauterman, by their attorney at law W'm McKinley, and defend the wrong and injury when, &c., and say the said plaintiff hath not filed in the clerk's office of this court a copy of the writing-obligatory in the plaintiff's declaration mentioned, as by the rule of this court said plaintiff is required to do.

Wherefore these defendants say they are entitled to an imparlance in said action until next November term of said court, for which imparlance they pray; and a copy of said writing-obligatory to be filed by the plaintiff.

WILLIAM McKINLEY,
Def'd'ts' Attorney.

8 And the said defendants, John Jones, Randolph H. Ramsay, and William G. Lauterman by their attorney, W'm McKinley, come and defend the wrong when, &c., and crave oyer of the condition of the writing-obligatory, upon which plaintiff's action is founded, and it is read to them in these words: That whereas the above-bounden William E. Quillian was appointed deputy postmaster at Milledgeville

aforesaid, on the 20th day of March, 1867, which said appointment was on the 20th day of March, 1867, confirmed by the Senate of the United States: Now, if the said William E. Quillian shall well and truly execute the duties of said office according to law and the instructions of the Postmaster-General. and faithfully, once in three months, or oftener if thereto required, render account of his receipts and expenditures as deputy postmaster to the Post-Office Department in the manner and form prescribed by the Postmaster-General in his several instructions to postmasters, and shall pay the balance of all moneys that shall come into his hands from postage collected, postage-stamps, and stamped envelopes sold, or money-orders issued by him, or from any other source connected with the postal service, in the manner prescribed by the Postmaster-General of the United States, for the time being, and shall keep safely without loaning, using, depositing in other banks, or exchanging for other funds than allowed by law, all the public money collected by him or otherwise at any time placed in his possession and custody, till the same is ordered by the Postmaster-General to be transferred or paid out; and when such order for transfer or payment
9 are received, shall faithfully & promptly make the same as directed, and shall also faithfully do and perform as agent and depository for the Post-Office Department, all such acts and things as may be required of him by the Postmaster-General; and, moreover, shall faithfully account with the United States in the manner directed by the said Postmaster-General for all moneys, postage-stamps, stamped-envelopes, bills, bonds, notes, drafts, receipts, vouchers, money-orders, blanks, and other property and papers, which he, as postmaster, or as agent and depository as aforesaid, shall receive for the use and benefit of the said Post-Office Department, then the above obligation shall be void; otherwise of force.

Which being read and heard, the said defendants, John Jones, Randolph H. Ramsay, and William G. Lauterman, say the said plaintiffs ought not to have or maintain their aforesaid action thereof against them, because they say that the said writing-obligatory is an official bond, and that they, the said John Jones, Randolph H. Ramsay, and William G. Lauterman, are not principal obligors in said writing-obligatory, but are only sureties for the other defendant and obligor, said William E. Quillian, who is the sole principal therein; and that if said William E. Quillian failed to perform the condition of said writing-obligatory, and failed to discharge faithfully all his duties as postmaster at Milledgeville required by law, or by any instruction or general
10 rule for the government of the Post-Office Department of the said United States of America, that the supposed cause of action in plaintiff's declaration mentioned did not accrue within two years before the commencement of plaintiff's said action against these defendants and said W'm E. Quillian in manner and form as the said plaintiff hath above thereof complained, and this the said John Jones, Randolph H. Ramsey, & W. G. Lauterman are ready to verify; wherefore they pray judgment if the said plaintiff ought to have or maintain their aforesaid action thereof, against them, &c.

W. McKINLEY,
Att'y for Jno. Jones, Randolph H. Ramsay & W'm G. Lauterman, Defendants.

And for further plea in this behalf, these defendants, John Jones, Randolph H. Ramsay, and W'm G. Lauterman, by their said attorney, say, that the plaintiffs ought not to have or maintain their aforesaid action against them; because, they say, that the said writing-obligatory in

plaintiffs' declaration mentioned, is an official bond of their said co-defendant, William E. Quillian as deputy postmaster at Milledgeville, in said State of Georgia, who is the sole principal therein, and these defendants are only sureties therein for said William E. Quillian, and that said writing-obligatory is not absolute, but is on the following condition, to wit: That whereas the above-bounden William E. Quillian was appointed deputy postmaster at Milledgeville aforesaid on
11 the 20th day of March, 1867, which said appointment was, on the 20th day of March, 1867, confirmed by the Senate of the United States: Now, if the said W'm B. Quillian shall well and truly execute the duties of said office according to law and the instructions of the Postmaster-General, and faithfully, once in three months, or oftener if thereto required, render accounts of his receipts and expenditures as deputy postmaster to the Post-Office Department in the manner and form prescribed by the Postmaster-General in his several instructions to postmasters, and shall pay the balance of all moneys that shall come to his hands from postage collected, postage-stamps, and stamped envelopes sold, or money-orders issued by him, or from any other source connected with the postal service, in the manner prescribed by the Postmaster-General of the United States for the time being, and shall keep safely without loaning, using, depositing in other banks, or exchanging for other funds than as allowed by law, all the public money collected by him or otherwise at any time placed in his possession and custody till the same is ordered by the Postmaster-General to be transferred or paid out; and when such orders for transfers or payments are received shall faithfully and promptly make the same as directed, and shall also faithfully do and perform as ag'nt and depository for the Post-Office Department, all such acts and things as may be required of him by the Postmaster-General; and, moreover, shall faithfully account
12 with the United States in the manner directed by the said Postmaster-General for all moneys, postage, stamped envelopes, bills, bonds, notes, drafts, receipts, vouchers, money-orders, blanks, and other property and papers which he as postmaster or as agent and depository as aforesaid, shall receive for the use and benefit of the said Post-Office Department, then the above obligation shall be void; otherwise of force.

And that, on the thirtieth day of September, in the year eighteen hundred and sixty-seven, said W'm E. Quillian, as deputy postmaster, as aforesaid, was indebted to the pl'ffs in the sum of one hundred and eighty-nine dollars and twenty-five cents, for balance due on his quarterly return as such deputy postmaster, for the quarter ending that day; and that in breach of the said condition in said writing-obligatory, said William E. Quillian made default as to said balance, and did not pay the same over to plaintiff in the manner prescribed by the Postmaster-General of the United States for the time being, and so these defendants aver that, as to said sum and quarterly balance of one hundred and eighty-nine dollars and twenty-six cents, the said W'm E. Quillian made default on the said thirtieth day of September, eighteen hundred and sixty-seven, more than two years before the commencement of the plaintiffs' said action, and that these defendants, as sureties for said Quillian, ceased to be liable altogether on the said writing-
13 obligatory, on and after the first day of October, in the year eighteen hundred and sixty-nine; and this they are ready to verify. And they pray judgment if pl'ff ought to have or maintain their aforesaid action against them.

W'M McKINLEY,
Attorney for John Jones, Randolph H. Ramsay, & W. G. Lauterman.

And for further plea in this behalf, said John Jones, Randolph H Ramsay, & W. G. Lauterman, by their said attorneys, say that plaintiffs ought not to have or maintain their aforesaid action thereof against them, because they say the said writing-obligatory in pl'ffs declaration mentioned is not an absolute bond, as pl'ffs have declared, but is an office bond upon condition. And these defendants are not principal obligors therein, but are only sureties for their co-defendant, W'm E. Quillian, who is the principal in said writing-obligatory. And the said writing-obligatory is conditioned for the faithful discharge by said William E. Quillian, as postmaster at Milledgeville, in the State of Georgia, of all the duties required of him as such postmaster by law, or which might be required of him by any instructions or general rule for the government of the Post-Office Department. And these defendants say that if any cause of action ever occurred to plaintiff against these defendants,
14 by the default of said W'm E. Quillian in breach of the condition of said writing-obligatory, that the plaintiff did not commence this action against these defendants and said W'm E. Quillian within two years after such default of said Quillian, and this these defendants are ready to verify; and they pray judgment if plaintiffs ought to have or maintain their aforesaid action thereof against them.

WILLIAM McKINLEY,
Attorney for Jno. Jones, Randolph H. Ramsay, and W'm G. Lauterman.

And for further plea to said action, these defendants, John Jones' Randolph H. Ramsay, and W. G. Lauterman, by their said attorney, say the plaintiffs ought not to have or maintain their aforesaid action against these defendants, because these defendants say that the said writing-obligatory in plaintiffs' declaration mentioned is not absolute, but is an official bond of the said co-defendant, W'm E. Quillian, as postmaster and principal, and of these defendants, as his sureties, and is upon condition for the faithful discharge of all the duties of said W'm E. Quillian as postmaster at Milledgeville required by law, or which might be required by any instructions or general rule for the government of the Post-Office Department; and the said defendants say that if any default in breach of the condition of said writing-obligatory was made or done by said William E. Quillian
15 as postmaster as aforesaid, that such default was made more than two years before the commencement of plaintiffs' said action, and so these defendants, the sureties aforesaid, say they are not liable to plaintiffs in said action, and this they are ready to verify; and they pray judgment if plaintiff ought to have or maintain their said action thereof against them.

W'M McKINLEY,
Attorney for John Jones, Randolph H. Ramsay, and W'm G. Lauterman.

And for further plea in this behalf these defendants, John Jones, Randolph H. Ramsay, and William G. Lauterman, say plaintiffs ought not to have or maintain their aforesaid action thereof against them, because they say that before and at the time of commencement of said action, the plaintiffs were, and still are, indebted to these defendants in the sum of seven hundred and eighty-six dollars and seventy-five cents, for money before then paid, laid out, and expended to and for the benefit of plaintiffs, and to the plaintiffs, a bill of particulars whereof is hereto annexed, the claim for which has been heretofore exhibited by defendants to plaintiffs as auditor of the Post-Office Department, and by him disallowed, which amount these defendants are willing and pray may be

set off against and deducted from the amount which may in this
16 action be recovered by plaintiff, or may be found to be otherwise due to plaintiffs, and this these defendants are ready to verify; and they pray judgment for the same, &c.

W'M McKINLEY,
Att'y for John Jones, Randolph H. Ramsay, and W. G. Lauterman, def'd'ts.

Post-Office Department of the United States to John Jones, Randolph H. Ramsay, and William H. Lauterman, Dr.

1868.

To balance of postmaster at Milledgeville for 1½ quarters, for keeping post-office at Milledgeville, at request of P. H. Woodward, special agent of General P.-Office Dep't.....	$487 50
Less by am't newspaper & letter-postage & box-rent collected for that period and included in quarterly return sent to Auditor of P.-Office Department but not yet allowed to us....	
1869. To cash paid Tho's G. Sims postmaster at Atlanta, agent for Post-Office Dep't, to be credited in ac. of said Quillian.....	299 25
	$786 75

Leave to withdraw pleas of def'd'ts.

And afterwards, to wit, on the 28th day of April, A. D. 1870,
17 the following order was granted, to wit:

This cause being continued by the plaintiffs, it is, on motion of attorney for the three defendants who have been served and who have heretofore filed their pleas to the action as sureties for the other defendant: Ordered, that they have leave to take their said pleas off the file without prejudice to their right to plead again to any new assignment or cause of action that may hereafter be declared on or exhibited by the plaintiffs.

W. McKINLEY,
Att'y for the Movants.

Be it so.

JOHN ERSKINE,
U. S. Judge.

Demurrer, special, by def'd'ts.

And afterwards, on the sixth day of May, A. D. 1871, came the defendants and filed their special demurrer in the words following, to wit:

And the said John Jones, William G. Lauterman and Randolph H. Ramsay, by their attorney, W'm McKinley, come and defend the wrong, &c., and say that the declaration, and the matters therein contained, in manner and form as the same are above set forth, are not sufficient in law for the plaintiffs to have or maintain their aforesaid action
18 against them, the said defendants, and they, said defendants, are not bound by law to answer the same for the following cause of demurrer, that is to say:

That said declaration is founded on a certain penal bond therein men-

tioned which, upon oyer had thereof according to law, is not absolute and single, as declared on by the plaintiffs, but is conditional, on a condition therein written, and that no breach of said condition, nor any demand founded on said breach, as a cause of action, is set forth in said declaration or notified to said defendants by copy thereof served on them, according to law and the rules of this court.

Wherefore, for want of a sufficient declaration in this behalf, said defendants pray judgment, and that said plaintiffs be barred of maintaining their said action against them.

WM McKINLEY,
Def'd'ts Att'y.

19 *Order on motion withdrawing special demurrer.*

UNITED STATES
vs.
WM E. QUILLIAN ET AL. } Special demurrer to declaration.

On motion of counsel for defendants it is ordered that the foregoing special demurrer be withdrawn.

In open court, May 6, 1871.

JOHN ERSKINE, *Judge.*

20 *Pleas.*

And at the said April term, on the *the* 6th day of May, A. D. 1871, came the defendants and filed their pleas as follows, to wit:

"And now comes the said defendants, John Jones, William G. Lauterman, and Randolph H. Ramsay, by W'm McKinley, their attorney, and defend, &c., and for plea say, said plaintiffs ought not to have or maintain their said action, because, they say:

1st. That the said pleading defendants are not principals but only sureties in the bond mentioned in plaintiffs' declaration for their co-defendant, William E. Quillian, who has not been served with process for faithful performance of his duties as deputy postmaster, and if he ever made any default as such postmaster it was more than two years before the commencement, and that no cause of action hath accrued thereon to plaintiffs within two years before the commencement, of this action.

2nd. And for further plea, said pleading defendants say, that as to any default of said William E. Quillian, their principal in said bond, in plaintiffs' said declaration mentioned, as deputy postmaster as aforesaid, as alleged by the plaintiffs', within three years before commencement of said action, that said answeri g defendants are not liable in law therefor, and do not owe the plaintiffs' anything therefor, but have been
21 and are fully discharged and released in law therefrom, and from any and all liability as sureties of said William E. Quillian, by the acts and conduct of the plaintiffs through their agent, the Auditor of the Treasury of the Post-Office Department of the said plaintiffs, who had full notice of the defalcation and embezzelment of funds of the plaintiffs before them; and yet negligently permitted said Quillian to remain in office as such deputy postmaster, whereby he was enabled to commit all the default and embezzelment aforesaid within two years before commencement of this action. And of this said defendants put themselves upon the country, &c.

WM McKINLEY,
Def'd'ts Att'y.

Order withdrawing def'd'ts first plea.

And afterwards, on the same day, the following order was granted, to wit:

UNITED STATES
vs.
W'M E. QUILLIAN ET AL.

Upon motion of W'm McKinley the plea of the statute of limitations filed in said case is withdrawn by leave of the court.

JOHN ERSKINE,
U. S. Judge.

In open court, May 6, 1871.

22 *Demurrer to plea of def'd'ts.*

And afterwards came the plaintiff, by its attorney, John D. Pope, and filed its demurrer to the second plea of defendants as follows, to wit:

UNITED STATES
vs.
W'M E. QUILLIAN ET AL. } Debt.

And now come the plaintiffs, by their attorney, and say that the second plea of said defendants is not sufficient in law. Wherefore they pray, &c.

JOHN D. POPE, *U. S. Att'y.*

Upon argument it is ordered by the court that the demurrer above filed be sustained, and that the plea be overruled.

JOHN ERSKINE,
U. S. Judge.

In open court, May 6, 1871.

Trial.

And afterwards, to wit, on the 6th day of May, A. D. 1871, it being the 26th day of the April term of said court, present and presiding the Hon. John Erskine, U. S. district judge for Georgia, the following further proceedings were had, to wit:

23 THE UNITED STATES
vs.
W. E. QUILLIAN ET AL. } Debt.

This cause came on to be heard, and the plaintiff and the defendants, by their attorneys, came, and to try the issue joined, a jury being called also came to wit:

George A. Jansen, George W. Aymar, John Sherlock, J. R. Burch, Laurence Dunn, Brister Green, John D. Cay, John R. Cook, J. C. Thompson, Geo. F. Manchester, James Mingay, and Geo. F. Marshal, and having been sworn, were empannelled to try the issue joined, and who upon their oaths for their verdict say:

Verdict.

"We, the jury, find for the plaintiffs the sum of seventeen hundred and fifty-six $\frac{47}{100}$ dollars principal, with interest thereon from October 17th, 1868, at 6 per cent., and costs of suit.

May 6, 1871.

GEORGE A. JANSEN,
Foreman.

Judgment.

UNITED STATES OF AMERICA,
Southern District of Georgia:

24 Afterwards, to wit, on the 6th day of May, one thousand eight hundred and seventy-one, before the judge of the said court, came the within-named plaintiffs, by their attorney within-named; and the said defendants, by W'm McKinley, their attorney, also came, and the jurors of the jury, whereof mention is made, likewise come, who being called, elected, tried, and sworn to speak the truth of the within contained, upon their oaths, say:

"We, the jury, find for the plaintiffs the sum of seventeen hundred and fifty-six $\frac{47}{100}$ dollars principal, with interest thereon from October 17th, 1868, at 6 per cent., and costs of suit.

"MAY 6, 1871."

Therefore it is considered that the said plaintiffs do recover against the said defendant's debt and damages aforesaid, by the jurors of the jury aforesaid assessed, and also for costs and charges aforesaid to the said plaintiff by the said court now hereof increased, adjudged, and with their assent. And the said defendant in mercy, &c.

JOHN D. POPE, *U. S. Attorney.*
And ANDREW SLOAN, *Ass't Att'y.*

Judgment signed & filed this 6th day of May, 1871.

JA'S McPHERSON, *Clerk.*

Writ of error.

Whereupon a writ of error was duly issued in the words following, to wit:

25 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the southern district of Georgia, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, in an action of debt between the United States, plaintiffs, and William E. Quillian, who was not served with process, and John Jones, Randolph Ramsay, and William G. Lauterman, who were served with process, a manifest error hath happened to the great damage of the said John Jones, Randolph H. Ramsay, and William G. Lauterman, as by their complaint appears.

We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then,

under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the
26 record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Salmon P. Chase, Chief Justice of the said Supreme Court, the sixth day of May, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.]

JAMES McPHERSON,
Clerk of the U. S. Fifth Circuit
Court So. Dist of Geo.

MAY 10, 1871.—Allowed by—

JOHN ERSKINE,
U. S. Dist. Judge Sitting at Circuit.

Bond.

And afterwards came the defendants and filed their bond to the plaintiffs in the words following, to wit:

JOHN JONES, RANDOLPH H. RAMSAY & W'm G. Lauterman,
vs.
THE UNITED STATES.

Know all men by these presents that we, John Jones, Randolph H. Ramsay, W'm G. Lauterman, principals, and Henry W. Thomas,
27 and And'w J. Brady, securities, are held and firmly bound unto the United States in the full and just sum of three thousand dollars, to be paid to the said United States, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, our executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated this ninth day of May, in the year of our Lord one thousand eight hundred and seventy-one.

Whereas lately at a circuit court of the United States of the fifth circuit thereof in and for the southern district of Georgia, in a suit depending in said court between the United States, as plaintiffs, and William E. Quillian, John Jones, Randolph H. Ramsay, and William G. Lauterman, defendants, judgment was rendered against the said John Jones, Randolph H. Ramsay, and William G. Lauterman, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said United States, citing and admonishing to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of December, next:

28 Now, the condition of the above obligation is such, that if the said John Jones, Randolph H. Ramsey, and William G. Lauterman, shall prosecute said writ of error to effect and answer all damage

and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

JNO. JONES, [SEAL.]
RANDOLPH H. RAMSAY, [SEAL.]
By his att'y at law W'M McKINLEY.
WM. G. LAUTERMAN. [SEAL.]
HENRY W. THOMAS, *Sec'ty.* [SEAL.]
A. J. BRADY. [SEAL.]

Signed, sealed, and delivered in presence of—
[SEAL.] PETER FAIR,
Not. Pub.

Citation.

Whereupon a citation was duly issued and service acknowledged in the words following, to wit:

UNITED STATES OF AMERICA, *ss:*

To the United States, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the
29 first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Georgia, wherein John Jones, Randolph H. Ramsay, and William G. Lauterman are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. John Erskine, one of the judges of said circuit court, this tenth day of May, A. D. 1871.

JOHN ERSKINE, *Judge, &c.*

MAY 10, 1871.

"Service acknowledged."
May 10, 1871.

ANDREW SLOAN, *Ass't U. S. Att'y.*

Clerk's certificate.

UNITED STATES OF AMERICA:
Southern District of Georgia:

I, James McPherson, clerk of the fifth circuit court for the southern district of Georgia, do hereby certify that the foregoing thirty
30 pages of writing contain a full, true, and complete copy of the state of the pleading, the statement of facts, and of the proceedings in the above-named cause, as the' remain of record on the records of the said circuit court.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court this fifth day of July, A. D. 1871.

[SEAL.] JA'S McPHERSON, *Clerk.*

31 And the sureties, said John Jones, Randolph H. Ramsay, and William G. Lauterman, assign for error—

That the circuit court erred in sustaining plaintiffs' demurrer to said

sureties' plea that they were discharged from liability for unsettled defaults and embezzlements of their principal, said William E. Quillian, as deputy postmaster at Milledgeville, Georgia, by the conduct and negligence of plaintiffs, apparent on the face of plaintiffs' certified accounts or evidence, in indulging and continuing in office their principal, said William E. Quillian, as deputy postmaster, with full knowledge of his defaults and embezzlements on the part of plaintiffs, thereby giving said principal increased opportunity to commit the defaults and identical embezzlements for which plaintiff now by this suit try to make said sureties accountable.

WILLIAM McKINLEY,
Def'd's Attorney.

(Indorsement on cover:) No. 352. John Jones, Randolph H. Ramsay, and William G. Lauterman, plaintiffs in error, v. The United States. S, Georgia, C. C. U. S. Filed 24th February, 1872.

Supreme Court of the U. S.

JONES, RAMSAY & LAUTERMAN
v.
UNITED STATES.
No. 143.

The plaintiffs in error, as sureties for William E. Quillian, were sued on a bond executed on 13 June, 1867, conditioned that the said Quillian should faithfully discharge the duties of Post Master at Milledgeville, Georgia, and "faithfully once in three months, or oftener if thereto required, render account of his receipts and expenditures—and shall pay the balance of all moneys that shall come to his hands—and shall keep safely all the public money collected by him, &c., p. 3.

To the default under this bond the defendants put in the plea: "that as to any default of the said Quillian, their principal in said bond in the declaration mentioned as Deputy Post Master aforesaid, within three years before the commencement of this action, they are not liable in law therefor, but have been and are fully discharged and released, by the acts and conduct of the plaintiff through their agent the Auditor of the Treasury of the Post Office Department, of the said plaintiff who had full notice of the defalcation and embezzlement of funds of the plaintiff before them; and yet neglectfully permitted said Quillian to remain in office as such Deputy Post Master, whereby he was enabled to

commit all the default and embezzlement aforesaid, within two years before the commencement of this action.

To this plea the plaintiff demurred, and his demurrer was sustained.

ASSIGNMENT OF ERROR.

It is now assigned for error, the overruling of the plea, and sustaining the demurer.

The plea which is inartificially drawn, presents the fact, that the default had occurred more than two years before the commencement of the action.

Further, that this default was well known to the plaintiff, and with this knowledge, Quillian was continued in office. The default is characterized in the plea as a "defalcation and embezzlement."

The demurrer admits all these allegations.

The third section of the act, 3 March, 1825, (4 Stat., 102,) after requiring a bond conditioned "for the faithful discharge of all the duties of such Postmaster, required by law, or which may be required by any instruction or general rule, for the government of the department," goes on to provide, "that if default shall be made by the Postmaster aforesaid, at any time, and the Postmaster General shall fail to institute suit against such Postmaster and said sureties, for two years from and after such default shall be made, then and in that case, the said sureties shall not be liable to the United States, nor shall suit be instituted againt them."

Independent of this limitation the plea avers that the sureties are not, and ought not to be, held liable for default committed by the Post Master, after the government had full notice that he had been guilty of embezzlement.

Assuming that the government is subject to the same legal obligation, as would be imposed on an individual

occupying the like position, ~~they~~ ought not to be allowed to recover.

If A becomes liable for the faithful discharge of duties by B., as clerk for C.—and it should come to the knowledge of C., that B. had embezzled his funds, but notwithstanding C. continues him in his employment, it would be a fraud on A, ignorant of this embezzlement, to hold him responsible for any subsequent act of dishonesty.

We say, in this case, that the knowledge of the Government that Quillian had embezzled its funds, should have caused his immediate dismissal. This would have terminated the liability of his sureties, and limited it to the amount then due. But when the government chooses to continue in office an officer known to have committed such an act, it takes upon itself the trust of his future honesty.

P. PHILLIPS.

In the Supreme Court of the United States.

OCTOBER TERM, 1873.

JOHN JONES, RANDOLPH H. RAMSAY, and WILLIAM G. LAUTERMAN, *Plaintiffs in Error*,
vs.
THE UNITED STATES.
No. 143.

In Error to the Circuit Court of the United States for the Southern District of Georgia.

BRIEF FOR DEFENDANTS IN ERROR.

In the Supreme Court of the United States.

OCTOBER TERM, 1873.

JOHN JONES, RANDOLPH H. RAMSAY, and WILLIAM G. LAUTERMAN, *Plaintiffs in Error*,
vs.
THE UNITED STATES.
} No. 143.

In Error to the Circuit Court of the United States for the Southern District of Georgia.

BRIEF FOR DEFENDANTS IN ERROR.

The record shows that the case stands upon the declaration, (p. 1,) the second plea on page 9, with the demurrer to such plea, (p. 10)—all other pleadings having been successively withdrawn. Among those withdrawn is a plea of the statute of limitations, being the first of the pleas upon page 9.

The *declaration* is in *Debt* upon a deputy postmaster's bond, executed by the defendants as sureties; the plea sets up a sort of equitable release, viz., the ill conduct of the Auditor of the Treasury, &c., an agent of the plaintiffs, in allowing the principal on the bond to re-

main in office after he had full notice of embezzlement by him, whereby he was enabled to commit the embezzlement for which this suit was brought.

ARGUMENT.

The "inartificial" manner in which the plea is framed has misled the learned counsel for the plaintiffs in error into supposing that it may be a plea of the statute of limitations; whereas the fact is that such a plea was put in at the same time with this, but was afterwards withdrawn.

It seems, also, that the words left upon the record, after all withdrawals, cannot be construed into a plea of the statute, as they expressly allege that from all defaults *committed by their principal* WITHIN *two years*, &c., they are released by the action of the Auditor as above.

That such action has no such effect has been often adjudicated in this court.

U. S. *vs.* Vanzandt, 11 Wheat., 184.
U. S. *vs.* Dandridge, 12 Wheat., 64.
Dox *vs.* The Postmaster General, 1 Pet., 318.
U. S. *vs.* Boyd, 15 Pet., 187.

GEO. H. WILLIAMS,
Attorney General.

S. F. PHILLIPS,
Solicitor General.